

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with	)	
Hearing and Speech Disabilities	)	
	)	
Truth-in-Billing and Billing Format	)	CG Docket No. 98-170

**COMMENTS OF CENTURYLINK<sup>1</sup>**

CenturyLink submits these comments in response to the Federal Communications Commission’s (Commission) request for comment regarding issues raised in the ITTA—The Voice of America’s Broadband Providers’ (ITTA) petition for a declaratory ruling<sup>2</sup> pertaining to recovery of interstate Telecommunications Relay Service (TRS) Fund contributions.<sup>3</sup>

CenturyLink agrees with ITTA that a non-specific line item charge that includes interstate TRS cost recovery is and always has been consistent with Commission requirements. This understanding is fully consistent with prior Commission statements regarding interstate TRS cost recovery and affords a rational balancing amid the prohibition on interstate TRS recovery via a specifically-identified charge, the significant increase in the interstate TRS contribution factor in the last several years, and the Commission’s Truth-in-Billing rules. To clear up any confusion as to the reach of the prohibition, the Commission should expressly state that interstate TRS cost

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<sup>1</sup> This filing is made on behalf of CenturyLink, Inc.’s subsidiary entities that contribute into the TRS Fund.

<sup>2</sup> ITTA—The Voice of America’s Broadband Providers, Petition for Declaratory Ruling, CG Docket Nos. 03-123, 98-170 (filed May 8, 2018) (*Petition*).

<sup>3</sup> Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on ITTA Petition for Declaratory Ruling*, DA 18-516, CG Docket Nos. 03-123, 98-170 (rel. May 18, 2018).

recovery may be accomplished through a non-specific line item charge under current rules, and initiate a rulemaking to eliminate the unnecessary prohibition altogether.

**I. THE PURPOSE OF THE LONG-STANDING PROHIBITION IS UNCLEAR, BUT APPEARS TO DE-ACCENTUATE INTERSTATE TRS FUND COST RECOVERY FOR CUSTOMERS.**

The Americans with Disabilities Accessibility Act of 1990 (ADA) established a requirement (in Section 225 of the Communications Act) for interstate telecommunications carriers to make available telecommunications relay services to hearing-impaired and speech-impaired individuals and allow these individuals to use communications networks “in a manner that is functionally equivalent to the ability of a hearing individual[.]”<sup>4</sup> The ADA required the Commission to create an interstate TRS program and “provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service[.]”<sup>5</sup> The Commission opened a rulemaking proceeding that year and, in its first order, recognized that it would need to establish a cost-recovery mechanism for carriers to be compensated for providing TRS, but concluded it lacked sufficient information to establish such a mechanism and sought further comment.<sup>6</sup> Nevertheless, the Commission also stated: “in order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on subscribers' lines.”<sup>7</sup> The Commission did not otherwise

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<sup>4</sup> 47 U.S.C. § 225(a)(3), (b)(1).

<sup>5</sup> *Id.* § 225(d)(3)(B).

<sup>6</sup> *Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, CG Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4664 ¶¶ 34-35; App. B, 47 C.F.R. § 64.604(c)(4)(ii) (1991) (*1991 TRS Order*).

<sup>7</sup> *Id.*

explain why it reached this conclusion, nor did it codify this requirement into the Code of Federal Regulations.

The Commission subsequently adopted the current “shared funding” mechanism for TRS involving a third-party administrator that distributes the total cost of all carriers’ provision of TRS among all carriers that are obligated to contribute.<sup>8</sup> Despite the introduction of the new, more detailed rules regarding TRS cost-recovery, the Commission left in place the prohibition on specific line-item recovery, and has periodically referenced that prohibition in the years since.

## **II. THE PROHIBITION’S UNEXPLAINED OBFUSCATION MUST BE RECONCILED WITH THE COMMISSION’S TRUTH-IN-BILLING RULES.**

At the same time, the Commission’s Truth-in-Billing rules are intended to make telephone bills easy-to-read, understandable, and accurate for consumers. Among other things, charges contained on telephone bills must be accompanied by a “brief, clear, non-misleading, plain language description of the service or services rendered.”<sup>9</sup> Despite this general policy towards disclosure and transparency in consumer billing—which includes line item charges on consumer bills—the Commission has continued to prohibit carriers from “specifically identifying charges” on consumers’ bills for contributions paid to the TRS Fund.<sup>10</sup> In 2005, the FCC

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<sup>8</sup> *Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, CG Docket No. 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806 ¶¶ 19, 22 (1993) (*1993 TRS Order*).

<sup>9</sup> 47 C.F.R. § 64.2401(b).

<sup>10</sup> See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12482, n. 33 (2004) (Commission reiterating that carriers required to contribute into the Interstate TRS Fund “may not specifically identify a charge on their consumers’ bill as one for relay services[.]”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 30 FCC Rcd 7063,

acknowledged some “tension” between this policy against identifying TRS Fund recovery charges as a specific line item and the Truth-in-Billing rules, and the FCC suggested that it would “revisit” the TRS-related prohibition in the future.<sup>11</sup> To date, however, the Commission has not changed its policy prohibiting the recovery of TRS Fund contributions via a specifically identified line item charge. In the absence of such a change, the Commission should recognize the tension it has created and construe the uncodified line-item prohibition in a manner that minimizes conflict with the Commission’s Truth-in-Billing rules.

### **III. CARRIERS ARE PERMITTED TO RECOVER THEIR INTERSTATE TRS FUND CONTRIBUTIONS FROM THEIR CUSTOMERS.**

The FCC also has made clear that carriers are permitted to impose line items or charges that have not been authorized or mandated by the government to recover their costs of providing service.<sup>12</sup> And, while the FCC has stated that carriers are not to recover their interstate TRS contributions through a specifically-identified line item, carriers are permitted to recover the cost of those contributions from their customers.<sup>13</sup>

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7068 ¶ 14 and n.35 (2015) (Bureau noting that “[t]he Commission has long prohibited carriers from specifically identifying charges for TRS Fund contribution costs in customer bills[]” and declining to depart from prior Commission statements on the issue).

<sup>11</sup> See *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170; CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6459 n. 60 and 6463 n. 86 (2005) (*2005 TIB Order*).

<sup>12</sup> *2005 TIB Order*, 20 FCC Rcd at 6458-59 ¶ 23 (subsequent history omitted); *Federal-State Joint Board on Universal Service, et seq.*, CC Docket Nos. 96-45, *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, 17 FCC Rcd 24952 ¶ 55 (Dec. 13, 2002).

<sup>13</sup> See 47 C.F.R. § 64.604(c)(5)(ii) (“Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism.”)

**IV. A REASONABLE APPROACH FOR ACCOMPLISHING THESE VARIED OBJECTIVES IS TO RECOVER INTERSTATE TRS FUND CONTRIBUTIONS THROUGH A LINE ITEM THAT INCLUDES, BUT IS NOT SPECIFIC TO, INTERSTATE TRS COST RECOVERY.**

Against this backdrop it seems generally recognized that a non-specific line item charge that includes interstate TRS cost recovery is and has always been permissible. While this seems to be recognized in the industry, others less steeped in telecommunications law and practice do not have the same understanding. Recently, a billing consultant acting on behalf of many customers has asserted that interstate TRS cost recovery may not be accomplished via any surcharge at all and that years of refunds are due to customers for surcharges paid for interstate TRS cost recovery. The billing consultant's claims of illegal conduct as a result of recovering interstate TRS fund contributions via a line item have consumed the attention of customers and providers alike without benefit to either.

The notion that interstate TRS contributions can only be recovered via a service rate is not sustainable in today's marketplace especially with the significant increases to the interstate TRS contribution factor over the last several years.<sup>14</sup> Competitive services are often provided via contract at an agreed price for several years. To effectively recover interstate TRS contributions via static competitive service rates would be challenging at best, and virtually impossible with the varied and significant annual increases in the interstate TRS contribution

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<sup>14</sup> Through the 2012-13 interstate TRS rate year the carrier contribution factor remained near or below .01. Since then, however, the contribution factor has been less stable and generally increasing at an increasing rate. In the 2015-16 year the factor was .01635. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket No. 03-123; CG Docket No. 10-51, Order, 30 FCC Rcd 7063 (2015). The current proposed factor for 2018-19 is .03034. *See Rolka Loube Associates Submits Payment Formulas and Funding Requirements for the Interstate Telecommunications Relay Services Fund for the 2018-2019 Fund Year*, CG Docket No. 03-123, Public Notice, DA 18-494 (rel. May 14, 2018). If this rate is adopted, the factor will have almost doubled in just three years. This rate of increase in the contribution factor is not sustainable.

factor over the last several years. Even if a carrier could negotiate for annual changes in service rates based on changes in the interstate TRS contribution factor, that approach presumably treads on the apparent intent behind the prohibition in the first place – to avoid highlighting to customers how much they are paying to support telecommunication services for those with hearing disabilities. In line with the prohibition, the better approach is to permit changes to total service charges via a surcharge that may adjust periodically based on various cost-recovery adjustments.

**V. THE COMMISSION SHOULD CONSIDER INITIATING A RULEMAKING TO ELIMINATE THE PROHIBITION AND RECONCILE THEIR POLICIES ON BILLING CLARITY FOR CONSUMERS.**

In accord with the Bureau’s request for comment on any other issues raised by the Petition, CenturyLink also urges the Commission to consider initiating a rulemaking to eliminate the line-item prohibition altogether. Eliminating the prohibition would better align interstate TRS cost recovery with the Commission’s Truth-in-Billing precepts, since this approach would give carriers the most transparent option of directly identifying their interstate TRS cost recovery. Customers want transparency; they want to know how much they are being charged and for what reasons. Accordingly, the Commission’s Truth-in-Billing rules are intended to provide transparency in what carriers are charging their customers and why. At the same time, there is no evidence that full transparency regarding TRS cost recovery will affect consumer perception of, or willingness to contribute to, the TRS fund. The Commission should initiate a proceeding to review and evaluate whether a continued prohibition on recovering interstate TRS costs through a specifically-identified line item is still warranted.

## VI. CONCLUSION.

At a minimum, the Commission should grant the ITTA petition and expressly state that interstate TRS cost recovery may be accomplished through inclusion in a line-item charge that is not specific to interstate TRS cost recovery. This would aid in better delineating the scope of the prohibition on recovering interstate TRS contributions via a specifically-identified charge for the benefit of the carriers that are subject to the prohibition and the customers that are subject to the associated charges. The Commission also should move forward with eliminating the prohibition altogether.

Respectfully submitted,

**CENTURYLINK**

Nicholas Alexander  
1099 New York Avenue, N.W.  
Suite 250  
Washington, DC 20001  
571-730-6473  
[Nick.Alexander@CenturyLink.com](mailto:Nick.Alexander@CenturyLink.com)

By: /s/ Tiffany West Smink  
Tiffany West Smink  
931 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Denver, CO 80202  
303-992-2506  
[Tiffany.Smink@CenturyLink.com](mailto:Tiffany.Smink@CenturyLink.com)

Its Attorney

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